

DOCKET FILE COPY ORIGINAL

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

RECEIVED
August 9 2004
Federal Communications Commission
Office of the Secretary
RECEIVED - FCC

OCT 21 2003

Federal Communication Commission
Bureau / Office

In re

NPCR, INC. d/b/a NEXTEL PARTNERS

CC Docket 96-45

Petition for Waiver of Section
54.313 of the Commission's Rules

RECEIVED

AUG - 9 2004

Federal Communications Commission
Office of the Secretary

To: The Commission

PETITION FOR WAIVER - EXPEDITED TREATMENT REQUESTED

NPCR, Inc. d/b/a Nextel Partners ("Nextel Partners"), by its counsel and pursuant to Sections 1.3 and 1.925(b) of the Commission's Rules, 47 C.F.R. § 1.3 and 47 C.F.R. § 1.925, hereby requests a waiver of Section 54.313 of the Commission's Rules, 47 C.F.R. § 54.313, which requires state certification of Universal Service Fund ("USF") High Cost Program support for non-rural carriers. Nextel Partners seeks this waiver for the time period October 1, 2003 through December 31, 2003 and for the non-rural study areas in which Nextel Partners was designated as an eligible telecommunications carrier ("ETC") by the State of Mississippi on September 29, 2003.¹ The rule waiver is required for Nextel Partners to begin to receive USF High Cost Program subsidies during the first quarter of 2003 in those non-rural designated areas.

In support of this Petition for Waiver, the following is respectfully shown:

¹ A list of the areas in Mississippi for which Nextel Partners has been designated an ETC is included in Exhibit A hereto.

I. BACKGROUND

Nextel Partners is a commercial mobile radio service ("CMRS") provider in the State of Mississippi and operates an advanced digital wireless network providing mobile telecommunications services under the "Nextel" brand name. On April 17, 2003, Nextel Partners filed a petition with the Mississippi Public Service Commission ("MPSC") requesting designation as an ETC in certain non-rural BellSouth Mississippi wire centers (hereafter, the "Designated Areas").² In support of its petition, Nextel Partners filed a detailed description of its proposed LifeLine and Link-Up wireless service plans³ and responded to various data requests from the MPSC. On September 29, 2003, the MPSC designated Nextel Partners as an ETC in the Designated Areas in Mississippi.

Under Section 54.313 of the Commission's rules, in order for an ETC to receive USF support for non-rural areas in states that have chosen to exercise jurisdiction, the State must file an annual certification with the Commission and with the Universal Service Administrative Company ("USAC") stating that all federal high-cost support will be used only for the provision, maintenance, and upgrading of facilities and service for which the support is intended. See 47 C.F.R. § 54.313. The annual certification under 54.313, due by October 1, is required to make USF High Cost Program funding available for the first through fourth quarters of the succeeding year.

On September 29, 2003, the same date that the MPSC designated Nextel Partners as an ETC, the MPSC submitted certifications in accordance with 47 C.F.R. § 54.313 to

² The specific BellSouth Mississippi wire centers for which Nextel Partners has been granted ETC status are set forth in Exhibit A hereto.

³ *Application of NPCR, Inc. d/b/a Nextel Partners for Designation as an Eligible Telecommunications Carrier Under 47 C.F.R. §214(e)(2); Amendment to Petition*, Mississippi Public Service Commission, 2003-UA-256 (filed July 17, 2003).

both the Universal Service Administrative Company ("USAC") and the Commission regarding Nextel Partners' use of USF funds.⁴ As a result, Nextel Partners is eligible to begin receiving USF support in the first quarter of 2004.

There is no mechanism for newly-designated ETCs to receive support for the three-month period following the state's October 1 certification. According to the certification schedule set forth in Section 54.313 of the Rules, the MPSC would have had to have filed an annual certification for Nextel Partners no later than April 1, 2003 in order for Nextel Partners to receive USF High Cost funding commencing September 29, 2003, which falls at the end of the third quarter of 2003.⁵ The MPSC did not submit the requisite annual certification by April 1, 2003, because Nextel Partners was not yet designated as an ETC. As a result, a waiver of Section 54.313 of the Rules is needed to allow Nextel Partners to receive funding for the time period September 29, 2003 through December 31, 2003.

II. REQUEST FOR WAIVER

Section 1.3 of the Commission's Rules, 47 C.F.R. § 1.3, allows the FCC to waive the application of any rules for good cause shown. In addition, Section 1.925(b)(3) provides for a waiver where it is shown that,

⁴ Copies of the MPSC's letters to USAC and to the Commission are reproduced as **Exhibit B** hereto.

⁵ In addition to providing certification to both the Commission and USAC as to its use of High Cost USF support, Nextel Partners is also required to provide line count information in order to be eligible for support and an additional filing containing a certification of its interstate access support. See 47 C.F.R. §§ 54.307(c), 54.802(a), and 54.809(a). Nextel Partners timely filed these additional submissions with the Commission and USAC by the requisite deadlines for the periods covered by this waiver request. Nextel Partners also filed its line counts on September 29, 2003 in compliance with the quarterly submissions for high cost model and interstate access support so that Nextel Partners could receive USF support in the first quarter of 2004.

Wherefore, for good cause shown, Nextel Partners respectfully submits that a waiver of the Commission's Rule as set forth above will serve the public interest.

Respectfully submitted,

NEXTEL PARTNERS, INC.

By: 

Albert J. Catalano
Matthew J. Plache
Ronald J. Jarvis
Catalano & Plache, PLLC
3221 M Street, N.W.
Washington, D.C. 20007
(202) 338-3200
(202) 338-1700 facsimile

October 21, 2003

EXHIBIT A

**Wire Centers in Mississippi for which
Nextel Partners has been designated an ETC**

ATTACHMENT 1

Designated Areas for which Nextel Partners
Is Designated As An ETC

BELLSOUTH CORP BENTMSSU

BELLSOUTH CORP BGCHMSSU

BELLSOUTH CORP BILXMSDI

BELLSOUTH CORP BNTNMSSU

BELLSOUTH CORP BOTNMSMA

BELLSOUTH CORP BRHNMSMA

BELLSOUTH CORP BRNDMSES

BELLSOUTH CORP BRWDMSMA

BELLSOUTH CORP CHNKMSSU

BELLSOUTH CORP CLNSMSMA

BELLSOUTH CORP CNTNMSMA

BELLSOUTH CORP COVLMSSU

BELLSOUTH CORP CRSPMSMA

BELLSOUTH CORP CRTHMSMA

BELLSOUTH CORP CSVLMSSU

BELLSOUTH CORP DFFEMSMA

BELLSOUTH CORP DKLBMSSMA

BELLSOUTH CORP EDWRMSDS

BELLSOUTH CORP ELVLMSSMA

BELLSOUTH CORP ENTRMSMA

BELLSOUTH CORP FLORMSMA

BELLSOUTH CORP FORSMSMA

BELLSOUTH CORP FYTTMSMA

BELLSOUTH CORP GLPTMSLY

BELLSOUTH CORP HDLBMSMA

BELLSOUTH CORP HPVLMSSU

BELLSOUTH CORP HRLYMSMA

BELLSOUTH CORP HTBGMSMA

BELLSOUTH CORP HZLHMSMA

BELLSOUTH CORP KSCSMSMA

BELLSOUTH CORP LAKEMSMA

BELLSOUTH CORP LARLMSMA

BELLSOUTH CORP LCDLMSMA

BELLSOUTH CORP LXTNMSMA

BELLSOUTH CORP MAGEMSMA

BELLSOUTH CORP MIZEMSMA

BELLSOUTH CORP MNASMSMA

BELLSOUTH CORP MNDNMSMA

BELLSOUTH CORP MNTIMSMA

BELLSOUTH CORP MRTNMSMA

BELLSOUTH CORP MSPNMSMA

BELLSOUTH CORP MSTFMSCU

BELLSOUTH CORP MTOLMSMA
BELLSOUTH CORP NWTNMSMA
BELLSOUTH CORP OBDHMSMA
BELLSOUTH CORP PCKNMSMA
BELLSOUTH CORP PCYNMSMA
BELLSOUTH CORP PGSNMSMA
BELLSOUTH CORP PHLAMSMA
BELLSOUTH CORP PLHTMSMA
BELLSOUTH CORP PFVLMSMA
BELLSOUTH CORP PRVMSMA
BELLSOUTH CORP PSCHMSLT
BELLSOUTH CORP PSCHMSMA
BELLSOUTH CORP QTMNMSMA
BELLSOUTH CORP RCTNMSMA
BELLSOUTH CORP RLFKMSMA
BELLSOUTH CORP RLGHMSMA
BELLSOUTH CORP RYMNMSDS
BELLSOUTH CORP SMRLMSMA
BELLSOUTH CORP SNRYMSMA
BELLSOUTH CORP TMSBMSMA
BELLSOUTH CORP TRRYMSMA
BELLSOUTH CORP TYVLMSMA
BELLSOUTH CORP UNINMSDS

BELLSOUTH CORP UTICMSDS
BELLSOUTH CORP VNCLMSMA
BELLSOUTH CORP WGNMSMA
BELLSOUTH CORP WNRDMSSU
BELLSOUTH CORP WSSNMSMA
BELLSOUTH CORP WYTCMSMA
BELLSOUTH CORP YZCYMSMA

EXHIBIT B

**Certification Letter Regarding Nextel Partners
Sent by the MPSC to USAC and the Commission**

**Before the
MISSISSIPPI PUBLIC SERVICE COMMISSION**

**APPLICATION OF
NPCR, INC. d/b/a NEXTEL PARTNERS
FOR DESIGNATION AS AN ELIGIBLE
TELECOMMUNICATIONS CARRIER
UNDER 47 U.S.C § 214(e)(2)**

DOCKET NO. 03-UA-0256

ORDER

COMES NOW the Mississippi Public Service Commission ("Commission") and it appearing to the Commission, for good cause shown and after reviewing the plan of NPCR, Inc. d/b/a Nextel Partners ("Nextel Partners") for utilization for the year 2004 Federal Universal Service Funding ("USF") heretofore submitted to this Commission by Nextel Partners, and this Commission being otherwise sufficiently advised, finds as follows:

I.

On April 17, 2003, Nextel Partners filed its Application for Designation as an Eligible Telecommunications Carrier ("ETC") under Section 47 U.S.C. 214(e)(2). The Commission entered an Order designating Nextel Partners as an ETC on September 29, 2003.

II.

On September 29, 2003, Nextel Partners submitted its detailed plan for utilization of the Federal Universal Service Fund for the year 2004 for approval by the Commission. The plan submitted was filed under seal, but generally proposed to maintain and support the existing infrastructure and also expand network services for projected 2004 growth. The Commission finds that Nextel Partner's proposed use of federal universal service

funds for the year 2004 in Mississippi is consistent with the principles of Universal Service as outlined in the Telecommunications Act of 1996 and by the FCC in its Universal Service Order.¹

III.

The Commission, after consultation with the Public Utilities Staff, concludes that Nextel Partners' plan for utilization of the Federal Universal Service Fund for the year 2004 is consistent with the Telecommunications Act of 1996 and the pertinent FCC orders.

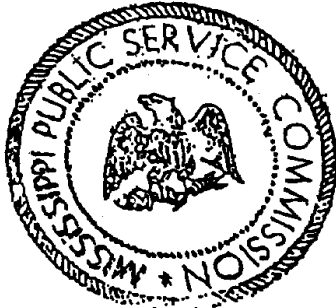
IT IS THEREFORE, ORDERED:

1. The Commission hereby certifies that Nextel Partners' plan to utilize Federal Universal Service High Cost Support Funds in Mississippi as contained in its plan submitted to the Commission on September 29, 2003, is consistent with 47 U.S.C. 254(c).
2. Nextel Partners shall file quarterly reports with the Commission providing the status of universal service fund expenditures and projects. This Order is effective as of the date hereof.

Chairman Michael Callahan voted *aye*, Vice-Chairman Bo Robinson voted *aye*, and Commissioner Nielsen Cochran voted *aye*.

¹ Federal-State Joint Board on Universal Service Ninth Report and Order and Eighteenth Order on Reconsideration, CC Docket No. 96-45, FCC 99-306, Released November 2, 1999 ("Universal Service Order"). See generally, paragraphs 93-110.

SO ORDERED, this the 29th day of September, 2003.



MISSISSIPPI PUBLIC SERVICE COMMISSION

BY: Michael Callahan
MICHAEL CALLAHAN, CHAIRMAN

BY: Bo Robinson
BO ROBINSON, VICE-CHAIRMAN

BY: Nielsen Cochran
NIELSEN COCHRAN, COMMISSIONER

ATTEST: A TRUE COPY

Brian U. Ray
BRIAN U. RAY
EXECUTIVE SECRETARY

Mississippi Public Service Commission

MICHAEL CALLAHAN, CHAIRMAN
HATTIESBURG - SECOND DISTRICT

BO ROBINSON, VICE-CHAIRMAN
HAMILTON - THIRD DISTRICT

NIELSEN COCHRAN, COMMISSIONER
JACKSON - FIRST DISTRICT



BRIAN U. RAY
EXECUTIVE SECRETARY
(601) 981-8480

WILLIE E. MAY, COUNSEL
OFFICE OF MOTOR CARRIERS

OSCAR L. MORGAN, MAJOR
OFFICE OF MOTOR CARRIERS

DAVID L. CAMPBELL, ATTORNEY
COMMISSION STAFF

September 29, 2003

Irene Flannery
Universal Service Administrative Company
21220 L Street, NW - Suite 600
Washington, D.C. 20037

Re: CC Docket No. 96-45; No. 99-306; October 1st Certification Deadline for Non-Rural Carriers

Dear Ms. Flannery:

Pursuant to 47 C.F.R. § 54.313, The Mississippi Public Service Commission ("MPSC") files its required certification for the year 2004 for NPCR, Inc. d/b/a Nextel Partners.

In accordance with the Federal Communications Commission's ("FCC") requirements in *Federal/State Joint Board on Universal Service, Ninth Report and Order, Eighteenth Order on Reconsideration, CC Docket No. 96-45; FCC 99-306*, the MPSC certifies that Nextel's proposed use of federal universal service high-cost support for the year 2004 will be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended, consistent with Section 254(e) of the Telecommunications Act of 1996.

Attached is a copy of the Commission's orders in its Docket No. 2003-UA-0256.

Enclosed is a stamped addressed envelope and an additional copy of this letter for you to use in forwarding a stamped filed copy of this correspondence. Thank you for your assistance in this matter.

Sincerely,

Handwritten signature of Michael Callahan.
Michael Callahan, Chairman

Handwritten signature of Bo Robinson.
Bo Robinson, Vice-Chairman

Handwritten signature of Nielsen Cochran.
Nielsen Cochran, Commissioner

Enclosure

Mississippi Public Service Commission

MICHAEL CALLAHAN, CHAIRMAN
NATIESBURG - SECOND DISTRICT

BO ROBINSON, VICE CHAIRMAN
HAMILTON - THIRD DISTRICT

NIELSEN COCHRAN, COMMISSIONER
JACKSON - FIRST DISTRICT



BRIAN U. RAY
EXECUTIVE SECRETARY
(601) 981-3400

WILLIE E. MAY, COLONEL
OFFICE OF MOTOR CARRIERS

OSCAR L. MORGAN, MAJOR
OFFICE OF MOTOR CARRIERS

DAVID L. CAMPBELL, ATTORNEY
COMMISSION STAFF

September 29, 2003

Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445-12th Street, SW, Room TW-A306
Washington, D.C. 20554

Re: CC Docket No. 96-45; No. 99-306; October 1st Certification Deadline for Non-Rural Carriers

Dear Ms. Dortch:

Pursuant to 47 C.F.R. § 54.313, The Mississippi Public Service Commission ("MPSC") files its required certification for the year 2004 for NPCR, Inc. d/b/a Nextel Partners.

In accordance with the Federal Communications Commission's (FCC) requirements in *Federal/State Joint Board on Universal Service, Ninth Report and Order, Eighteenth Order on Reconsideration, CC Docket No. 96-45; FCC 99-306*, the MPSC certifies that Nextel's proposed use of federal universal service high-cost support for the year 2004 will be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended, consistent with Section 254(e) of the Telecommunications Act of 1996.

Attached is a copy of the Commission's orders in its Docket No. 2003-UA-0256.

Enclosed is a stamped addressed envelope and an additional copy of this letter for you to use in forwarding a stamped filed copy of this correspondence. Thank you for your assistance in this matter.

In accordance with the FCC's mandate, this certification letter is also being sent to Irene Flannery, Universal Service Administrative Company.

Sincerely,

Handwritten signature of Michael Callahan in black ink.
Michael Callahan, Chairman

Handwritten signature of Bo Robinson in black ink.
Bo Robinson, Vice Chairman

Handwritten signature of Nielsen Cochran in black ink.
Nielsen Cochran, Commissioner

Enclosure

Cc: Irene Flannery